

STATE OF OKLAHOMA
LOGAN COUNTY SS:
FILED FOR RECORD ON

IN THE DISTRICT COURT OF LOGAN COUNTY, STATE OF OKLAHOMA

2014 SEP 11 PM 12:45

AMERICAN CIVIL LIBERTIES UNION)
OF OKLAHOMA FOUNDATION,)

Plaintiff,)

vs.)

JIM BAUMAN, in his personal and)
official capacity as SHERIFF OF LOGAN)
COUNTY,)
Defendant.)

REJEANIA ZHEK
COURT CLERK

BY _____ DEPUTY

Case No:

CV-2014-62

Assigned Judge:

DUE1

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF
FOR VIOLATION OF THE OKLAHOMA OPEN RECORDS ACT**

COMES NOW, Plaintiff American Civil Liberties Union of Oklahoma Foundation, by and through Brady R. Henderson, Attorney, and pursuant to 51 O.S. §24A.17(B), hereby petitions this Honorable Court to temporarily and permanently enjoin Sheriff Jim Bauman from continuing to deny access to specific public records in violation of the Oklahoma Open Records Act (51 O.S. §§24A.1-24A.29), and to determine and declare the rights and responsibilities of both parties as to the public records sought by Plaintiff. In support of said Petition, Plaintiff alleges and states:

I. STATEMENT OF FACTS

1. Plaintiff is a domestic not-for-profit corporation registered and in good standing with the Oklahoma Secretary of State, with its primary place of business in Oklahoma City, Oklahoma.
2. Plaintiff's purpose is to support the activities of the Oklahoma affiliate of the American Civil Liberties Union, a national not-for-profit, non-partisan, voluntary organization founded in 1920. Its purpose is to protect those rights guaranteed by the United States Constitution and the Bill of Rights such as freedom of religion, freedom of speech, freedom of the press, freedom of assembly, freedom

to petition the government for a redress of grievances, freedom of association, the right to privacy, the right to due process of law and the right to equal protection under the law. The Oklahoma affiliate of the American Civil Liberties Union is composed of nearly 1600 members from throughout Oklahoma.

3. Defendant Jim Bauman is a natural person and is currently the duly-elected Sheriff of Logan County, Oklahoma. On information and belief, Bauman first was elected to the office of Sheriff in 2008, and first took office in January, 2009. He was reelected to his second term as Sheriff in 2012.
4. Defendant's place of residence and place of business as Sheriff are both located within the bounds of Logan County, Oklahoma.
5. Defendant, as Sheriff of Logan County, is a "public official" within the meaning of the Oklahoma Open Records Act (51 O.S. §24A.3(4)).
6. Defendant's office, the Office of Sheriff of Logan County, is a "public body" as defined by the Oklahoma Open Records Act (51 O.S. §24A.3(2)).
7. On or about February 26, 2014, Plaintiff sent Defendant a written request to make specified public records available for inspection pursuant to the Oklahoma Open Records Act. The request was sent via certified mail to Defendant's place of business, the Logan County Sheriff's Office, and Plaintiff received a return receipt indicating the request was received and accepted on February 28, 2014. A copy of this written request is attached as Exhibit "A."
8. The written request seeks disclosure and inspection of documents of and relating to an internet-based database known as "Black Asphalt."
9. On information and belief, Black Asphalt was the creation of a private for-profit limited liability company called Desert Snow, LLC, of Guthrie, Oklahoma, and its founder, Joe David. It is controlled, at least in part, by a separate limited liability company also formed by Mr. David for this purpose, Black Asphalt, LLC. Both companies are registered with the Oklahoma Secretary of State.

10. On information and belief, Defendant commissioned Joe David as a Reserve Deputy with the Logan County Sheriff's Department.
11. On information and belief, the Black Asphalt system is a networking tool designed so that individual law enforcement officers can share information and reports as well as chat online, all without having to use their respective agencies' reporting, dispatch, log, or record-keeping systems.
12. On information and belief, the Black Asphalt system contains, or has contained, reports of identifying information and activities of thousands of American citizens, an unknown number of which are Oklahomans.
13. On information and belief, these reports include, or have included, confidential information such as social security numbers.
14. On information and belief, these reports include information about citizens never charged with any criminal offense.
15. On information and belief, these reports are not subjected to any requirement that the information within them be legally obtained or released by the subjects, or that there be probable cause or even reasonable suspicion of criminal wrongdoing for information to be recorded and posted.
16. On information and belief, the taking and dissemination of subject information in the Black Asphalt database is not disclosed to the subjects themselves, nor consented to by them.
17. On information and belief, information posted and disseminated on Black Asphalt concerning citizens and their activities is used routinely to lead to the detention, arrest, or prosecution of these citizens, as well as the seizure of their property.

18. On information and belief, the Black Asphalt system allows law enforcement officers to make reports and compare information regarding criminal investigations and findings that are never disclosed to prosecutors, defense attorneys, or courts as part of the criminal discovery process, creating a substantial violation of due process rights of an unknown number of citizens, presumably numerous.
19. On information and belief, the Black Asphalt system, since its inception, has had up to 25,000 members throughout the United States and Canada.
20. Black Asphalt, LLC, placed the Black Asphalt webpages under Defendant's full control and authority in August, 2012.
21. The Black Asphalt webpages were in Defendant's authority and control as a public official at the time his office received Plaintiff's request for inspection and disclosure.
22. To date, Plaintiff has received no response of any kind to the written request for disclosure and inspection.
23. On information and belief, in June 2014 (exact date unknown to Plaintiff), Defendant announced that control of the database records would move from the Logan County Sheriff's Office to the Kane County Sheriff's Office, in Kane, County, Illinois. As of the filing of this Petition, The Black Asphalt website, while still using the address "LCSD.blackasphalt.org" to connote the participation of the Logan County Sheriff's Department ("LSCD"), now states that, "this site was transferred to the Kane County Sheriff's Office."
24. On August 1, 2014, Plaintiff sent Defendant a letter calling attention to the lack of response to Plaintiff's open records request and reminding Defendant of his obligations under the Oklahoma Open Records Act. The letter, a copy of which is attached as Exhibit "B," also expressed concerns over the possible movement of database public records outside Oklahoma in an attempt to avoid disclosure, and as such, contained a reminder to Defendant of Oklahoma's criminal statute

proscribing the removal or destruction of public records by a public official. Plaintiff also sent copy of the letter to the Logan County District Attorney.

25. The letter, to which a copy of Plaintiff's original request was also attached, was sent via certified mail to Defendant's place of business, the Logan County Sheriff's Office, and Plaintiff received a return receipt indicating the request was received and accepted on August 2, 2014.
26. To date, Plaintiff has received no response of any kind to this letter.
27. On August 6, 2014, Counsel for Plaintiff, Brady Henderson, went to the Logan County Sheriff's Office in person in an attempt to inspect these public records, under his right to do so during regular business hours that is specifically granted in 51 O.S. §24A.5. Defendant's representative, a uniformed Sheriff's Deputy, informed him that no records were available for him to see, and that she "did not know anything about" any request for inspection Plaintiff had made. She also identified herself as the records officer for the Sheriff's Department, but declined to allow any inspection of the sought records.
28. To date, no further communication has been received from Defendant or his representatives or agents.
29. To date, none of the sought records have been received, nor any notice of additional procedural actions required by Defendant.

CAUSE OF ACTION

30. The Oklahoma Open Records Act, 51 O.S. §§24A.1-24A.29, both expresses and effects "the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government." 51 O.S. §24A.2.
31. Pursuant to this public policy, the stated purpose of the Oklahoma Open Records Act "is to ensure and facilitate the public's right of access to and review of

government records so they may efficiently and intelligently exercise their inherent political power.” 51 O.S. §24A.2.

32. The records sought by Plaintiff, as defined in detail in the attached Exhibit “A,” relate to a matter of substantial and critical public interest, implicating the above purpose in both letter and spirit.
33. The Oklahoma Open Records Act, to effect the above purpose, mandates, “All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction...” 51 O.S. §24A.5. As such, it imposes an affirmative and legally cognizable duty on Defendant to allow public access to the records within his possession or control.
34. As such, Defendant has not met his duties under the Oklahoma Open Records Act, having denied Plaintiff access to public records without any assertion of a purported legal right to do so.
35. Under 51 O.S. §24A.17(B), the Defendants’ denial of access to this unknown number of records is actionable by civil suit for declaratory and injunctive relief.

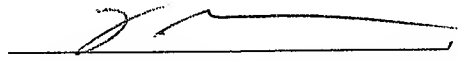
PRAYER FOR RELIEF

36. Pursuant to 51 O.S. §24A.17(B), Plaintiff requests injunctive relief be granted via judicial order for the immediate release and inspection of all records described in Plaintiff’s Exhibit “A” under the custody and control of Defendant, as well as a log or list of all records, if any, that have been removed from Defendant’s control or destroyed following receipt of Plaintiff’s written request for inspection.
37. Plaintiff further prays that the Court provide declaratory relief by judicially recognizing Plaintiff’s right of access to the sought public records within the possession or control of Defendant, unless exempted from release by a specific provision of the Oklahoma Open Records Act.

38. Plaintiff further prays that the Court grant Plaintiff a judgment for reasonable attorney fees in this action, as Plaintiff is entitled by 51 O.S. §24A.17(B)(2), upon successful determination or action on the merits.

WHEREFORE, premises considered, Plaintiff prays this Honorable Court grant the aforementioned relief as requested. Plaintiff reserves the right to supplement and/or amend this pleading if necessary to conform to any subsequently ascertained evidence.

Respectfully Submitted,



Brady R. Henderson, OBA#21212

Ryan Kiesel, OBA #21254

ACLU of Oklahoma Foundation


3000 Paseo Drive

Oklahoma City, OK 73103

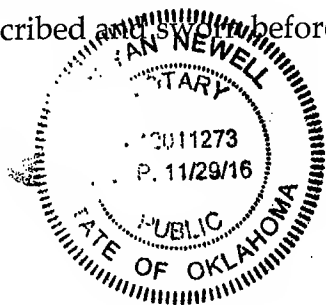
(405) 524-8511, (405) 524-2296 (fax)

STATE OF OKLAHOMA)
) ss.
County of Oklahoma)

1. I, Brady Henderson, am duly authorized to represent the ACLU of Oklahoma Foundation and am employed as its Legal Director.
2. That I have read the above and foregoing Petition and am familiar with the contents thereof, which include factual allegations within my personal knowledge and observation.
3. That the allegations stated therein are true and correct to the best of my knowledge.


Brady Henderson

Subscribed and sworn before me this 11th day of September, 2014.



By: [Signature]
NOTARY PUBLIC

My Commission Number: 12011273

My Commission Expires: 11/29/16



To: Sheriff Jim Bauman
Logan County Sheriff's Office
216 S. Broad
Guthrie, OK 73044

From: Brady R. Henderson
Legal Director, ACLU of Oklahoma Foundation
3000 Paseo Drive
Oklahoma City, OK 73103

**REQUEST FOR DISCLOSURE AND INSPECTION OF PUBLIC RECORDS
PURSUANT TO THE OKLAHOMA OPEN RECORDS ACT**

Pursuant to the Oklahoma Open Records Act, 51 O.S. §§24A.1-24A.29, we hereby request that the following records be made available for inspection and duplication at our election:

1. All records under the control of the Logan County Sheriff's Department held, compiled, archived, transmitted, or otherwise controlled by, with, in, or through the internet-based information and notification system known as "Black Asphalt" or "The Black Asphalt Electronic Networking and Notification System."
2. All records created, held, compiled, archived, transmitted, or otherwise controlled by, with, in, or through the internet-based information and notification system known as "Black Asphalt" that include or consist of:
 - a. any arrestee description, including any name, date of birth, address, race, sex, physical description, or occupation of an arrestee;
 - b. any facts concerning an arrest, including the cause of arrest and the name of the arresting officer;
 - c. any crime summary; OR
 - d. any information on the disposition of any warrant or other order of a court commanding a law enforcement office to make an arrest.
3. A chronological listing of all incidents reported or recorded with, by, or through the internet-based information and notification system known as "Black Asphalt," including, to the maximum extent available, initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.

4. Any and all contracts, memoranda of understanding, precipes, or other agreements made between the Sheriff, Sheriff's Department, or any agents or designees thereof, and any officer, representative, or employee of Desert Snow, LLC, or Black Asphalt, LLC.
5. Any and all contracts, memoranda of understanding, precipes, or other agreements to which the Sheriff, Sheriff's Department, or any agents or designees thereof is a party, in which any officer, representative, or employee of Desert Snow, LLC, or Black Asphalt, LLC, is a party or signatory.
6. Any and all records of payments or expenditures of any public funds to or for the benefit of Desert Snow, LLC, Black Asphalt, LLC, or any employee, officer, or representative thereof.
7. A record or list of all individuals credentialed, commissioned, contracted, or employed by the Sheriff or Sheriff's Department since January 1, 2012.
8. A record or list of all individuals commissioned, appointed, or otherwise serving as Reserve Deputies in Logan County, from January 1, 2012 to the present.

Please note that we are asking to inspect these records. We reserve, however, the right to request copies when the records are examined. For any records falling into the scope of this request that also contain confidential information or information otherwise outside the scope of required disclosure under the Oklahoma Open Records Act, we hereby request that reasonably segregable portions be provided, as outlined in 51 O.S. §24A.5(2).

The Oklahoma Open Records Act prohibits the charging of a search fee when the release of the "documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants." The ACLU of Oklahoma is a public interest organization made up of over 1400 Oklahoma citizens and taxpayers. Our inquiry in this matter is made for precisely the public interest purpose laid out above.

Should any part of this request be denied, we hereby request a written response asserting the specific exemption or privilege that you believe allows the denial of each specific record withheld.

Responses to this request should be directed to Brady R. Henderson, Legal Director, ACLU of Oklahoma, at 3000 Paseo Drive, Oklahoma City, OK 73103.

Thank you in advance for your prompt reply.

Sincerely,



Brady R. Henderson



Exhibit "B"

August 1, 2014

Sheriff Jim Bauman
Logan County Courthouse
216 S. Broad
Guthrie, OK 73044

Cc: Tom Lee, Logan County District Attorney

Dear Sheriff Bauman:

AMERICAN CIVIL
LIBERTIES UNION OF
OKLAHOMA
3000 PASEO
OKLAHOMA CITY, OK 73103
T/405.524.8511
F/405.524.2296
WWW.ACLUOK.ORG

On February 23, 2014, your office received an open records request from our organization sent via certified mail. The request seeks various records relating to, among other things, your office's dealings with Desert Snow, LLC, and the database known as Black Asphalt. It has been over five months since you received our request, and we have received no response. Rather than turning over these records as is your duty under law, it now appears your office may be taking steps to remove or destroy at least some of these records to avoid having to produce them.

Our open records request (a copy of which is attached to this letter) was made pursuant to 51 O.S. §§24A.1-24A.29, known commonly as The Oklahoma Open Records Act (hereinafter "the Act"). While the Act does not specify a specific time for response, it does require that "prompt, reasonable access" to records be provided. (51 O.S. §24A.5(5)) Further, the Act allows a public office such as your own to "establish reasonable procedures which protect the integrity and organization of the records and to prevent excessive disruptions of its essential functions." (id.) A written request such as ours is technically not required by the Act, but is naturally a helpful courtesy to make the process easier for public offices.

We made our written request to give your office an opportunity to perform any tasks necessary to ensure that our inspection of the records in question does not cause excessive disruption. Since more than five months have elapsed in which we have received no notice of any objection or any further procedure we need follow, we presume that the records are available for our inspection or reproduction during regular business hours, as mandated of all your office's public records by 51 O.S. §24A.5. Please contact us if this is not the case. We do note that the Act further states:

"A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours for the public body."
(51 O.S. §24A.5(6))

AMERICAN CIVIL
LIBERTIES UNION OF
OKLAHOMA
3000 PASEO
OKLAHOMA CITY, OK 73103
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WWW.ACLUOK.ORG

Since occasionally a letter can become lost in the mail or otherwise fail to reach its destination, please feel free to contact me to let us know if your office attempted to send our organization a further response that failed to reach us. Otherwise, relying on your office's compliance with 51 O.S. §24A.5, we presume that the records are available for our inspection without objection. I will be dropping by the Sheriff's office in the next few days to inspect these records in person.

Should I be denied access to the records at that time, our organization will be left with no choice but to bring a civil suit seeking a court order for the records to be turned over immediately, as is our right and remedy under 51 O.S. §24A.17(B). I sincerely hope that such action will not be necessary.

It has also come to my attention that while the Black Asphalt database is still active in Logan County, it now claims to be "under transition to a new supporting law enforcement agency," namely the Kane County Sheriff's Office of Kane County, Illinois. This intended movement of Black Asphalt's servers, when combined with your office's failure to respond and Desert Snow's well-documented history of deceitful and illegal activity, creates a more than reasonable suspicion that the database is being removed from Oklahoma in an attempt to avoid disclosure.

I sincerely hope that this suspicion if wrong, for if right, it engenders disturbing questions for your constituents and for all citizens of Oklahoma, pointing to a deep and harsh betrayal of the public trust by some of the very people who have taken an oath to defend it. Specifically, I must remind you that such conduct violates the Open Records Act by constituting an improper denial of access to public records. Such violation could result in civil remedies and can be prosecuted as a misdemeanor criminal offense.

More critically, I must politely and respectfully remind you of the mandate of 21 O.S. §461, which I believe would apply to such removal or destruction of these public records. The statute states:

"Any clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding five (5) years, and in addition thereto, such person shall forfeit office."

As you may have noticed, I sent a copy of this letter to Logan County District Attorney Tom Lee. Should you be engaged in or planning the removal or destruction

of any records described in our request, or allowing others to do so, I would urge you to confer with the District Attorney's Office or other legal counsel before continuing such a course of action.

Thank you for your time, and for your service to the people of Logan County.

Sincerely,



Brady R. Henderson, OBA#21212
Legal Director, ACLU of Oklahoma
3000 Paseo Drive
Oklahoma City, OK 73103
(405) 525-3831

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